Filed 10/22/13 In re B.A. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re B.A., a Person Coming Under the Juvenile Court Law.	H039431 (Santa Cruz County Super. Ct. No. DP002308)
SANTA CRUZ COUNTY HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. L.A., Defendant and Appellant.	

In July 2010, the Santa Cruz County Human Services Department (Department) filed a petition alleging the failure of K.B., the mother (Mother), and the biological father, O.O., to protect and provide support for their daughter, B.A. (now three; the minor), under Welfare and Institutions Code section 300, subdivisions (b) and (g), respectively.[1] The minor was placed in protective custody on the date she was born after both she and Mother tested positive for methamphetamine and marijuana. At the detention hearing, placement and care of the minor were vested in the Department with

[1] Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

supervised visitation rights granted to Mother. At that hearing, L.A.—appellant herein and Mother's long-time boyfriend and father of her three older children and one younger child (hereafter, Appellant)—requested that he be adjudged the father of the minor, notwithstanding the fact that he was incarcerated at the time the child was conceived. On August 19, 2010, the court found Appellant to be the presumed father of the minor. On September 14, 2010, approximately two months after the minor was detained, the court sustained the petition and ordered that Mother and Appellant would have custody of the minor under the Department's supervision.

A supplemental petition was filed in July 2011 after Mother gave birth to another child, M.A., with amphetamines and marijuana in her system. Appellant was M.A.'s natural father. The petition was sustained, the minor and her younger sister were placed in foster care, and Mother and Appellant were granted reunification services. These services were later terminated and, after a contested permanency hearing, the court found the minor to be adoptable and ordered the termination of Mother's and Appellant's parental rights.

On appeal from that order, Appellant contends that the juvenile court erred in two respects. First, he argues that the permanency order must be reversed because the court failed to comply with the notice provisions of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.; ICWA). Second, Appellant asserts that the court erred in concluding that he had not met his burden of establishing the beneficial parental relationship exception to adoption. We reject both of these appellate claims. Accordingly, we will affirm the order declaring adoption as the permanent plan for the child, B.A., and terminating the parental rights of Mother, K.B., and Appellant, L.A.

FACTS AND PROCEDURAL HISTORY

I. *Initial July 2010 Petition and Detention Order*

On July 8, 2010, the Department filed a petition alleging that the parents had failed to protect the minor and that she had been left without any provision for support. (§ 300, subds. (b), (g).) The Department alleged, inter alia, that (1) Mother had a five-year substance abuse issue; (2) Mother had obtained no prenatal care because "she was in denial about the pregnancy" and had considered terminating it; (3) both Mother and the minor had tested positive at the birth of the minor for methamphetamine and marijuana; (4) such drug use by Mother during pregnancy had demonstrated a disregard for the minor's "physical safety and well[-]being and place[d the minor] at substantial risk of harm"; (5) Mother's failure to obtain prenatal care and her use of marijuana and unprescribed Vicodin had placed the minor's physical well-being at substantial risk; (6) the person alleged by Mother to be the minor's biological father, O.O.,[2] had not provided for the minor's safety and support; and (7) there was a history of abuse and neglect by Mother and Appellant of the minor's three older half-siblings.

On July 9, 2010, the court ordered the minor detained pursuant to section 319, subdivision (a). The court ordered that Mother be permitted supervised visitation of the minor at a minimum of three times per week. It deferred determination of parentage as to Appellant.

II. *2010 Jurisdiction/Disposition Report and Jurisdictional Hearing*

In its August 2010 jurisdiction/disposition report, the Department indicated that although the minor had been previously removed from Mother's care, minor's three

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[2] In an attachment to the petition, the social worker noted that Mother and Appellant lived together and that he was the natural father of Mother's three other children, but was not the minor's biological father. Mother told the social worker that Appellant had cheated on her, and after he was incarcerated, she and O.O. had slept together one time, and she had become pregnant with the minor.

siblings had been left in the care of Mother and Appellant. The Department requested that the juvenile court take jurisdiction of the minor pursuant to section 300, subdivisions (b), (g), and (j), and that the minor be returned to the care of Mother.[3] The report included an investigative narrative reflecting that there was a history with the Department involving Mother and Appellant with respect to the minor's three older siblings, dating back to 2005, and that complaints of substance abuse, neglect, and domestic violence had been, in different instances, "evaluated out" or determined to have been unfounded.

On August 19, 2010, the court found Appellant to be the presumed father of the minor.

In a supplemental report dated September 2010, the Department reported that Mother had failed to (1) respond to efforts to have her attend counseling and parenting classes, (2) attend a Family Preservation Court session recommended after a drug and alcohol assessment, and (3) appear for four scheduled drug testing sessions. The Department also reported that Appellant had failed to respond to efforts to have him attend counseling and parenting classes, and had failed to appear for one scheduled drug testing session. It reported further that Appellant had a criminal history, including a conviction for vehicular manslaughter in 2009 for which he received probation and an approximate nine-month jail term.

On September 14, 2010, after a jurisdictional hearing attended by Mother and Appellant, the court found the allegations in the petition true; sustained the petition; declared the minor a dependent child of the juvenile court; ordered that Mother and Appellant would have custody of the minor under the Department's supervision; and ordered the commencement of family maintenance services.

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[3] The proceedings also concerned Mother's three other children; the Department recommended that they also be made dependents of the juvenile court.

III. *July 2011 Petition (Section 387) and Order*

The Department filed a supplemental petition under section 387 on July 12, 2011, seeking a modification of the disposition to place the minor in foster care. It alleged that (1) Mother had recently given birth to M.A., and, at her birth, both the newborn and Mother had tested positive for marijuana and amphetamines, resulting in M.A.'s detention on June 27, 2011; (2) the baby had exhibited signs of "disorganized eating patterns consistent with exposure to marijuana and amphetamines"; (3) arrangements had been made on June 23, 2011, for Mother to enter a residential treatment program, but she had failed to enter the program; (4) Mother and Appellant had not been making substantial progress in their case plan activities; (5) Appellant had not been compliant with substance abuse testing, having twice refused drug testing, and had recently been observed at a home known to be a location for the sale of drugs; and (6) Appellant had actively discouraged Mother from entering a residential treatment program notwithstanding the Department's recommendation that she attend one.

On July 14, 2011, the court concluded that a prima facie showing for detention had been met, found that continuation in the parents' home would be contrary to the minor's welfare, and ordered the minor detained and that temporary placement of the minor be vested in the Department.

In supplemental August 2011 reports, the Department indicated that the minor's three older siblings had been placed in a home with unrelated family members, and that the minor and M.A. had been placed in an approved Santa Cruz County foster home. The Department reported that Mother had started a residential drug treatment program on July 21, 2011, but had left the program after one day. The social worker also reported that Mother and Appellant had failed to attend a scheduled session of Family Preservation Court and had not made arrangements to make up that missed appointment. In addition, in drug testing performed July 12, 2012, Mother had tested positive for amphetamine and methamphetamine, and Appellant had tested positive for marijuana, amphetamine and

methamphetamine. The social worker concluded that Mother and Appellant were "not participating or making substantial progress in their case plan activities." The Department recommended that the minor and her four siblings be detained and be placed outside of the parents' home, and that reunification services be offered to Mother and Appellant.

On September 7, 2011, after a contested hearing on the disposition of the section 387 petition,[4] the court sustained the petition. It found that an award of custody to the parents would be detrimental to the minor; reasonable efforts to prevent the need for removal of the minor from the parents' custody had been taken; there was a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if she were returned home; and out-of-home placement of the minor was appropriate and necessary because the parents had made little or no progress in alleviating or mitigating the matters that had caused the placement of the minor in out-of-home care. Accordingly, the court ordered the minor removed from the physical custody of her parents and placed in the care, custody and control of the Department; reasonable reunification services be provided to Mother and Appellant; and Mother and Appellant receive supervised visitation of three days per week. The court set a six-month review hearing for March 6, 2012.[5]

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[4] Mother did not appear at the hearing.

[5] At an interim review hearing on December 6, 2011, attended by Appellant, the social worker reported that "neither parent [was] engaged in testing or the recovery portion of their case plans." The parents were visiting consistently with the minor and staying in contact with the social worker. Mother did not attend the hearing. It was later reported that the evening before the hearing, there had been "an alleged incident of domestic violence involving the parents and [Mother] had fled the premises." At the conclusion of the December 6 hearing, Appellant was taken into custody on an outstanding warrant.

After a contested six-month review hearing held on April 23, 2012, the court found that the conditions that justified the initial assumption of the court's jurisdiction over the minor still existed; the parents had been offered and provided reasonable services designed to assist them in overcoming the problems that led to removal of their child; and return of the minor to the parents would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the minor. The court ordered that reunification services for Mother and Appellant be terminated, and it reduced supervised visitation to one visit per month. It also set a selection and implementation hearing for August 16, 2012, which was ultimately continued to February 11, 2013.[6]

IV. *August 2012 and January 2013 Assessments Under Section 366.26*[7]

On August 16, 2012, the Department filed its assessment, pursuant to section 366.26. The Department reviewed, inter alia, the minor's history before having been made a dependent of the juvenile court; the status of Mother's and Appellant's supervised visits with the minor; the minor's physical and emotional condition; and the minor's foster care status. The Department recommended that the parental rights of Mother and Appellant be terminated and that a permanent plan of adoption be established. After the permanency hearing was continued, on January 31, 2012, the Department filed a supplemental report that essentially contained the same information and made the same recommendations as were contained in the August 2012 report.

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[6] The matter was apparently ready to proceed on October 1, 2012, but was continued at the Department's request because notice was not given to the minor's biological father, O.O. Because the whereabouts of O.O. could not be ascertained, the Department applied for and obtained an order permitting service by publication upon O.O.

[7] The August 2012 assessment report and the January 2013 supplemental assessment report are discussed more extensively in part III.B. of the Discussion, *post*.

V. *February 2013 Permanency Hearing*

At the selection and implementation (permanency) hearing on February 11, 2013, the court permitted submission of the August 2012 and January 2013 reports pursuant to section 366.26.[8] The court also received documentary evidence and testimony from Mother. Appellant, through counsel, provided a statement (discussed, *post*). The court heard argument by counsel for the Department, the minor, Mother, and Appellant. Both parents argued that the beneficial parental relationship with the minor and the beneficial sibling relationship warranted the denial of the Department's request that parental rights be terminated.

The court found by clear and convincing evidence that the minor was both generally and specifically adoptable, and approved the permanent plan of adoption. The court concluded further that there was no compelling reason for finding that termination of parental rights would be detrimental to the child and, accordingly, terminated the parental rights of Mother and Appellant. It set a permanent placement review hearing for August 1, 2013. Appellant filed a timely notice of appeal. That order is one from which an appeal lies. (§ 366.26, subd. (i)(1); see *In re Matthew C.* (1993) 6 Cal.4th 386, 393, superseded by statute on another point as stated in *People v. Mena* (2012) 54 Cal.4th 146, 156.)

DISCUSSION

I. *Applicable Legal Principles*

Section 300 et seq. provides "a comprehensive statutory scheme establishing procedures for the juvenile court to follow when and after a child is removed from the home for the child's welfare. [Citations.]" (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) As

[8] The court also, pursuant to the Department's request, took judicial notice of its order after a contested permanency hearing in October 2012 in a related case involving the minor's younger sister, M.A. (Santa Cruz Superior Court case number DP2480).

our high court has explained, "The objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time. [Citations.] Although a parent's interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect. [Citations.] The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful. [Citations.] This interest is a compelling one. [Citation.]" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

After it has been adjudicated that a child is a dependent of the juvenile court, the exclusive procedure for establishing the permanent plan for the child is the permanency hearing as provided under section 366.26. The essential purpose of the hearing is for the court "to provide stable, permanent homes for these children." (§ 366.26, subd. (b); see *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1797.) There are six statutory choices for the permanency plan; the preferred choice is that the child be ordered to be placed for adoption, coupled with an order terminating parental rights. (§ 366.26, subd. (b); see also *In re Celine R.*, *supra*, 31 Cal.4th at p. 53 ["Legislature has thus determined that, where possible, adoption is the first choice"]; *ibid.* [where child is adoptable, "adoption is the norm"].)[9] The court selects this option if it "determines . . . by a clear and convincing standard, that it is likely the child will be adopted." (§ 366.26, subd. (c)(1).)

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[9] "(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, 366.22, or 366.25, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the

(continued)

Thus, at the permanency planning hearing, "in order to terminate parental rights, the court need only make two findings: (1) that there is clear and convincing evidence that the minor will be adopted; and (2) that there has been a previous determination that reunification services shall be terminated. '[T]he critical decision regarding parental rights will be made at the dispositional or review hearing, that is, that the minor cannot be returned home and that reunification efforts should not be pursued. In such cases, the decision to terminate parental rights will be relatively automatic if the minor is going to be adopted.' [Citation.] [T]he decisions made at the review hearing regarding reunification are not subject to relitigation at the termination hearing. This hearing determines only the type of permanent home.' [Citation.]" (*In re Cynthia D.* (1993) 5 Cal.4th 242, 249-250, quoting Sen. Select Com. on Children & Youth, SB 1195 Task Force Rep. on Child Abuse Reporting Laws, Juvenile Court Dependency Statutes, and Child Welfare Services (Jan. 1988).)

"If the court determines it is likely the child will be adopted, certain prior findings by the juvenile court (e.g., that returning the child to the physical custody of the parent would create a substantial risk of detriment to the physical or emotional well-being of the child) shall constitute a sufficient basis for the termination of parental rights unless the juvenile court finds one of six specified circumstances in which termination would be detrimental [to the child]." (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1522-1523, citing § 366.26, subd. (c)(1).) The six specified circumstances in section 366.26, subdivision (c)(1)(B) may serve as compelling reasons for the court's electing not to terminate parental rights if it finds that such "termination would be detrimental to the child." These

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following order of preference: [¶] (1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. . . ." (§ 366.26, subd. (b).)

circumstances are "actually *exceptions* to the general rule that the court must choose adoption where possible." (*In re Celine R., supra*, 31 Cal.4th at p. 53.) They " 'must be considered in view of the legislative preference for adoption where reunification efforts have failed.' [Citation.] At this stage of the dependency proceedings, 'it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.' [Citation.] The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption." (*Ibid.*, original italics.) One such exception—urged by Appellant here—based upon the beneficial parental relationship, requires a showing that "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)

II. *Compliance with the ICWA Notice Requirements*

A. *Background and Contentions*

At the commencement of the proceedings, Mother and Appellant filed on July 9, 2010, separate forms captioned "Parental Notification of Indian Status" (ICWA-020 form). (Capitalization omitted.) Mother indicated that she might have Indian ancestry because her grandfather was Cherokee. Appellant indicated that his mother is or was a member of a federally recognized tribe, Chumash (Northern band). Appellant advised the social worker that his mother was "trying to get her number and then I'm going to try to register [with the Chumash tribe]."

In this proceeding concerning the minor, on July 21, 2010, the Department sent a notice (ICWA-030 form) to Mother, Appellant, the Sacramento Area Director of the Bureau of Indian Affairs, the United States Secretary of the Interior, the Cherokee Nation of Oklahoma, the United Keetoowah Band of Cherokee Indians, and the Eastern Band of Cherokee Indians. The Department listed Cherokee as the only potential tribe in which

the minor was a member or in which she might be eligible for membership; it did not list the Chumash tribe in the form.[10] Further, it noted O.O. as the biological father, whose address and other personal information were unknown. It did not identify Appellant, whom the court later adjudicated to be the presumed father. The court found at the hearing on August 10, 2010, that proper ICWA notice had been given in accordance with rule 5.482(a)(1) of the California Rules of Court.[11]

On March 22, 2011, the Department filed an "ICWA Attachment to Social Worker's Report," advising that it had received responses from both the United Keetoowah Band of Cherokee Indians and the Eastern Band of Cherokee Indians indicating that the minor (and her three older siblings) were neither members nor eligible for membership in the respective tribes. (Capitalization omitted.) The Department also noted that the Cherokee Nation had responded, requesting additional family information; the Department was unsuccessful in obtaining the information from Mother. The court, by order of March 22, 2011, found that two tribes had responded that the minor was not eligible for membership, and the third tribe had provided no definitive response within the 60 days provided by law. It therefore found that the ICWA did not apply.

Appellant contends that "[t]he juvenile court failed to provide notice to the identified tribe after the presumed father claimed Chumash heritage" and, therefore, the order after the section 366.26 permanency hearing must be reversed. He argues that the

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[10] The record reflects that in related dependency proceedings involving the minor's three older siblings, the Department on July 26, 2010, sent an ICWA-030 form notice that listed the minor's siblings as being members of, or possibly being eligible for membership in, the Chumash tribe.

[11] Although the court did not indicate it as a basis for its finding in this proceeding, the Department indicated in a report attachment filed August 10, 2010, that in a previous dependency involving two of the minor's older siblings, the Department sent ICWA notices to, among others, "the Cherokee tribes and the Santa Ynez Band of Mission Indians (Chumash)." The court in that proceeding "made the finding that the ICWA does not apply based on tribal responses."

suggestion of Indian ancestry through his statement that his mother was a member of the Chumash tribe resulted in the court's being required to provide an ICWA notice to that tribe. He argues that, notwithstanding the fact that he is not the minor's biological father, notice under the ICWA was mandated.

B. *The ICWA*

The ICWA, enacted in 1978, is a federal law, which is recognized and applied in California. (See, e.g., *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1197.) Its purpose is to protect the interests of Indian children and to promote the stability and security of Indian tribes and families. (25 U.S.C. § 1902; see, e.g., *In re Elizabeth W.* (2004) 120 Cal.App.4th 900, 906.)

"Among the procedural safeguards imposed by the Act is the provision of notice to various parties." (*In re Levi U.* (2000) 78 Cal.App.4th 191, 196; accord, *In re O.K.* (2003) 106 Cal.App.4th 152, 156.) "Notice is a key component of the congressional goal to protect and preserve Indian tribes and Indian families. Notice ensures the tribe will be afforded the opportunity to assert its rights under the Act irrespective of the position of the parents, Indian custodian or state agencies." (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.) California implements the ICWA's notice requirements through statutes and court rules. (§§ 224-224.6, 290.1-297; Cal. Rules of Court, rules 5.480-5.487.)

The ICWA generally requires that notice be given "where the court knows or has reason to know that an Indian child is involved" in a dependency proceeding. (25 U.S.C. § 1912 (a).) State law similarly provides: "If the court, a social worker, or probation officer knows or has reason to know that an Indian child is involved" in the dependency proceeding, notice is required. (§ 224.2, subd. (a); *In re Alice M., supra,* 161 Cal.App.4th at p. 1197.) The federal act defines "Indian child" as "any unmarried person who is under the age of eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C., § 1903(4); see also [Welf. & Inst. Code,] § 224, subd. (c).) It need

not be a certainty that the child is an "Indian child" to require the giving of ICWA notice. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 471.) "The determination of a child's Indian status is up to the tribe; therefore, the juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement." (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 848; but see *In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1520 ["both the federal regulations and the California Welfare and Institutions Code require more than a bare suggestion that a child might be an Indian child"].)

The law also imposes a duty of inquiry. Pursuant to California law, both the court and the agency "have an affirmative and continuing duty to inquire whether a child . . . is or may be an Indian child" for ICWA purposes. (§ 224.3, subd. (a); see Cal. Rules of Court, rule 5.481(a); *In re K.M.* (2009) 172 Cal.App.4th 115, 118-119.) According to the federal guidelines, the court is required to " 'make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe.' " (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1158, quoting 44 Fed.Reg. 67588 (Nov. 26, 1979), italics omitted.) "[The] ICWA's notice provisions open the door to the identification of a dependent child as an Indian child and to the tribe's right to intervene in the proceedings." (*In re Nikki R., supra,* 106 Cal.App.4th at pp. 852-853.)

"The juvenile court must determine whether proper notice was given under [the] ICWA and whether [the] ICWA applies to the proceedings." (*In re E.W.* (2009) 170 Cal.App.4th 396, 403.) "We review the trial court's findings for substantial evidence." (*Id.* at p. 404.) "Where there is reason to believe a dependent child may be an Indian child, defective ICWA notice is 'usually prejudicial' [citation], resulting in reversal and remand to the juvenile court so proper notice can be given." (*In re Nikki R., supa,* 106 Cal.App.4th at p. 850.) In such instances, a court may order reversal with a limited remand to facilitate the giving of a proper ICWA notice. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 187.)

C. *There Was Compliance with the ICWA*

1. *The Claim Was Not Forfeited*

We address initially whether the claim of error is cognizable on appeal. It is not disputed that Appellant failed to raise below a question concerning the alleged inadequacy of the ICWA notice. He did not object either to the court's August 10, 2010 order finding that proper ICWA notice had been given, or to its March 22, 2011 order concluding that the ICWA did not apply.

"The purposes of the notice requirements of [the ICWA] are to enable the tribe to determine whether the child is an Indian child and to advise the tribe of its right to intervene. The notice requirements serve the interests of the Indian tribes 'irrespective of the position of the parents' and cannot be [forfeited] by the parent." (*In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1267, quoting *In re Kahlen W.*, *supra*, 233 Cal.App.3d p. 1421.) And as the court in *In re Marinna J.* (2001) 90 Cal.App.4th 731, 739 explained, "it would be contrary to the terms of [the ICWA] to conclude . . . that parental inaction could excuse the failure of the juvenile court to ensure that notice . . . was provided to the Indian tribe named in the proceeding." (See also *In re Alice M.*, *supra*, 161 Cal.App.4th at pp. 1195-1197 [forfeiture doctrine generally does not apply to bar consideration of appellate claims concerning ICWA notices not raised in dependency proceedings]; but see *In re Pedro N.* (1995) 35 Cal.App.4th 183, 189 [failure of mother at section 366.26 hearing to challenge sufficiency of ICWA notices given nine months earlier precluded her from raising issue on appeal].)

We conclude that Appellant's failure to challenge the sufficiency of the ICWA notice below does not bar his assertion of that claim here.[12]

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[12] In addition, this case must be distinguished from one in which a forfeiture is found because the parents, in *successive* appellate proceedings, raised ICWA issues but

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2. *The Claim Has No Merit*

As discussed above, notice under the ICWA must be given "where the court knows or has reason to know that an Indian child is involved" in the dependency proceeding. (25 U.S.C. § 1912 (a); see also [Welf. & Inst. Code,] § 224.2, subd. (a).) This means that an ICWA notice must be given where the court knows or has reason to believe that the child "is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the *biological child* of a member of an Indian tribe." (25 U.S.C. § 1903(4), italics added.)

There is nothing in the record here that the minor herself was "a member of an Indian tribe" under the first alternative definition of "Indian child." Thus, the only basis upon which Appellant can (and does) claim that notice under the ICWA should have been given is under the second definition that the minor is eligible for membership in an Indian tribe and is the biological child of a tribe member. (28 U.S.C. § 1903(4)(b).) But it is undisputed here that Appellant is *not* the minor's biological father. Appellant was in jail at the time the minor was conceived, and he was released in January 2010, approximately six months before the minor was born. And he has never contended he is the minor's natural father. Since Appellant is not her biological father, the minor, by definition, is not an "Indian child" under 28 U.S.C. section 1903(4)(b), irrespective of whether Appellant, as urged here, "may be eligible for membership in the Chumash tribe."

In re E.G. (2009) 170 Cal.App.4th 1530 is instructive. There, after the minor was detained, the department of health and human services identified two alleged fathers. (*Id.* at p. 1532.) In addition to the mother claiming possible heritage in two Indian tribes, one of the alleged fathers, A.J., claimed possible heritage in two other tribes. (*Ibid.*) The department sent ICWA notices to the tribes claimed by the mother, but not those claimed

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did not raise them at any time at the trial level. (See *In re X.V.* (2005) 132 Cal.App.4th 794, 804-805.)

by A.J. (*Ibid.*) It was determined through a paternity test that A.J. was not the minor's biological father. (*Id.* at p. 1532-1533.) The appellate court held that there was no error in the department's having failed to give ICWA notices to the tribes claimed by the nonbiological father, A.J.: "An alleged father may or may not have any biological connection to the child. Until biological paternity is established, an alleged father's claims of Indian heritage do not trigger any ICWA notice requirement because, absent a biological connection, the child cannot claim Indian heritage through the alleged father. Since A.J. was excluded as a biological father of the child, no notice was required under [the] ICWA." (*Id.* at p. 1533.)

Appellant here—as was the case with A.J. in *In re E.G.*, *supra*, 170 Cal.App.4th 1530—was not the biological father of the minor. Accordingly, the minor could not claim Indian heritage through Appellant and was thus not an "Indian child" under 28 U.S.C. section 1903(4).

Appellant, however, relies on *In re B.R.* (2009) 176 Cal.App.4th 773, in support of his position that the Department was nonetheless required to give notice under the ICWA to the Chumash tribe. There, the mother of two children placed under the jurisdiction of the juvenile court challenged the trial court's order after a section 366.26 hearing in which it found the children adoptable and terminated parental rights; she argued that proper ICWA notices were not given. (*In re B.R.*, at p. 778.) Richard H., the presumed and biological father of the children (*id.* at pp. 777, 785), was reported by his mother to have been adopted and that his adoptive father was one-fourth Apache Indian. (*Id.* at p. 778.) But ICWA notices were not sent to the Apache tribes (*id.* at pp. 778-779), because the department "apparently determined that no notices to the Apache tribes were 'required by law' under the court's [prior] findings because the minors were not biological descendents of an ancestor with Apache blood" (*id.* at p. 781).

The appellate court held that an ICWA notice should have been given to the Apache tribes, based upon Richard H.'s potential membership as a result of his adoptive

father's reportedly having been one-fourth Apache. (*In re B.R.*, *supra*, 176 Cal.App.4th at pp. 781-785.) It reasoned that, "when it comes to the determination of a child's Indian tribe membership status, it is for the tribe itself to make that determination." (*Id.* at p. 782.) The court observed that the literal language of 25 U.S.C. section 1901(4) did not exclude the possibility that the children were "Indian child[ren]" simply because their biological father's Apache connection was not one of blood. (*Id.* at p. 783.) "To the contrary, the ICWA focuses on 'membership' rather than racial origins. It protects children who are 'members of or eligible for membership in' federally recognized Indian tribes. [Citation.]" (*Ibid.*) Reasoning that "[t]ribal membership is treated under the ICWA as a matter of political affiliation rather than racial origin" (*id.* at p. 783), the court held that an ICWA notice to the Apache tribes should have been given to afford the tribes the ultimate determination of whether the children were "Indian child[ren]" under the Act. (*Id.* at p. 785.).

We agree with the reasoning of *In re B.R.* but conclude that it is not controlling under the circumstances presented here. Unlike Richard H., the presumed and biological father of the children in *In re B.R.*, Appellant is indisputably *not* the biological father of the minor. Thus, in contrast to the children in *In re B.R.*—who each potentially met the definition of "Indian child" under 25 U.S.C. section 1901(4)(b) as being eligible for Indian tribe membership *and* being "the biological child of a member of an Indian tribe"—there is no possibility the minor here could meet the definition of an "Indian child" under the federal statute. Therefore, *In re B.R.* does not compel the conclusion that under the facts here, notice under the ICWA should have been given to the Chumash tribe because of the nonbiological father's potential Chumash heritage.

The minor was not an "Indian child" for purposes of requiring ICWA notice to the Chumash tribe due to her nonbiological father's potential Indian heritage. Appellant's claim that the order must be reversed due to inadequate notice under the ICWA therefore fails.

III. *Court's Rejection of Beneficial Parental Relationship Exception*

A. *Applicable Law*

Under the beneficial parental relationship exception, the parents must establish that they "have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)[13] This requires a two-prong showing by the parent that (1) he or she has maintained regular visitation, and (2) the child would benefit from continuing the relationship. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) " 'Sporadic visitation is insufficient to satisfy the first prong' of the exception." (*Ibid.*, quoting *In re C.F.* (2011) 193 Cal.App.4th 549, 554.) In order to establish the second prong, the parent must show "that 'severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.' [Citation.]" (*In re Marcelo B.*, at p. 643, original italics, quoting *In re Angel B* (2002) 97 Cal.App.4th 454, 466.) The burden is on the parent asserting the beneficial parent relationship to produce evidence establishing that exception. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527.)

In determining whether the beneficial parental relationship exception applies, the court balances the degree of benefit that a continuation of the parental relationship would afford versus the benefit of placing the child with adoption. (*In re Casey D.* (1999) 70

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[13] "[T]he court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1).)

Cal.App.4th 38, 50.) As one court has explained: "[W]e interpret the 'benefit from continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Application of the beneficial relationship exception is a case-specific endeavor. (*In re Autumn H., supra,* 27 Cal.App.4th at pp. 575-576.) " 'Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.' [Citation.]" (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315-1316.)

Review of a court's determination of the applicability of the parental relationship exception under section 366.26 is governed by a hybrid substantial evidence/abuse of discretion standard. (*In re Bailey J., supra,* 189 Cal.App.4th at pp. 1314-1315.) "Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental . . . relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court's determination. Thus, . . . a challenge to a juvenile court's finding that there is no beneficial relationship amounts to a contention that the 'undisputed facts lead to only one

conclusion.' [Citation.] Unless the undisputed facts established the existence of a beneficial parental . . . relationship, a substantial evidence challenge to this component of the juvenile court's determination cannot succeed. [¶] The same is not true as to the other component of . . . the parental relationship exception . . . [, which] is the requirement that the juvenile court find that the existence of that relationship constitutes a '*compelling reason* for determining that termination would be detrimental.' (§ 366.26, subd. (c)(1)(B), italics added.) A juvenile court finding that the relationship is a 'compelling reason' for finding detriment to the child is *based* on the facts but is not primarily a factual issue. It is, instead, a 'quintessentially' discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.] Because this component of the juvenile court's decision is discretionary, the abuse of discretion standard of review applies." (*Ibid.*, original italics; see also *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622 [following *In re Bailey J.*].)

B. *Background Concerning Parental Relationship Exception*

The court at the permanency hearing considered documentary evidence, namely, the Department's August 2012 section 366.26 assessment and supplemental January 2013 assessment, and logs containing narratives concerning Mother's and Appellant's supervised visits with the minor and her siblings. It also heard testimony from Mother and a statement from Appellant delivered through his attorney.

1. *August 2012 Assessment*

In the August 2012 assessment made pursuant to section 366.26, the Department reviewed the history of the dependency proceedings. It also reviewed the parents' history of prior dependency proceedings involving the minor's older siblings, indicating that because of substance abuse and child neglect, there was "a prior Family Reunification Case that began in 2005 and resolved in a Family Maintenance case in 2006. For almost

18 months, the Department attempted to work with the parents to address these concerns without removing the minor children from their care. However, the parents did not participate in the recommended services and made minimal progress in addressing the concerns." It noted that while the family maintenance case was pending, the minor was born, testing positive for marijuana and amphetamine, which resulted in her being removed from her parents and detained by the court.[14]

The Department indicated in its assessment that Mother and Appellant had "been fairly consistent with visitation" of the minor and her younger sister, M.A., but generally arrived late for the visits, and neither parent was "proactive" with respect to the scheduling of visits. During the May 10, 2012 visit in which the parents arrived 25 minutes late, they brought bag lunches, kites, and small toys for the minor and her four siblings. The parents played with the older children and checked periodically on the two younger children (the minor and M.A.), "but were unable to integrate them into the activities they were enjoying with the older children." The visit ended with the parents giving hugs and kisses to the children. The children left "without distress."

In their monthly supervised visit on June 21, 2012, the parents arrived approximately 15 minutes late with snacks for the minor and M.A. The "[p]arents played with toys and followed [the minor's and M.A.'s] cues. [The minor] seemed more at ease with the parents." They read books with the minor. At the end of the visit, the parents gave hugs and kisses to the minor and M.A. and the two children "left with their caregiver without distress."

Both parents missed the scheduled visit on July 9, 2012. "[Mother] insisted that the visit had not been scheduled and that she had not received her reminder messages."

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[14] The assessment indicated that the minor had also tested positive for Vicodin at birth. This appears to be an error, although Mother had reported that she had used Vicodin near the time of the minor's birth.

The social worker indicated that the minor and M.A. had never developed parent-child relationships with Mother and Appellant due to their "parents' substance abuse, criminal history and volatile relationship issues. They have only received consistent care from their current caregiver. [The minor's and M.A.'s] parent/child relationships have been profoundly disrupted by their placement in foster care and their parents' absence from their day[-]to[-]day life and their parents' failure to build a parental relationship with them."

It was also noted in the assessment that neither Mother nor Appellant had engaged in the family reunification services offered to them by the Department to address the issues that had led to the minor's detention. The social worker concluded: "The parents have built a playful visiting relationship with their children. However, neither parent has been willing or able to fully participate in services that would have addressed the concerns of the Court and enable[d] them to become safe and stable parents for [the minor] and [M.A.]."

The social worker described the minor as an "active and adorable . . . two[-]year[-]old toddler[] . . . [who had] thrived in the care of [her] current caretakers." The minor had been residing with caregivers since July 2011, who were a couple who had been married for over 20 years; owned their own home; had lived in Santa Cruz County for many years; had four older children: and were ready, willing and able to adopt her. The caregivers also indicated a willingness to adopt M.A., who had been living with them since July 2011, shortly after her birth. The social worker reported: "The caregivers strongly believe that the girls [the minor and M.A.] are a significant support to one another and need to be kept together. . . . They see positive changes in the girls and want to support and nurture those positive changes and growth."

The Department concluded that the minor was both generally and specifically adoptable. The Department recommended that the parental rights of Mother and

Appellant be terminated—concluding that such termination would not be detrimental to the minor's welfare—and that a permanent plan of adoption be established.

2. *Supplemental January 2013 Assessment*

In the supplemental assessment of January 2013, the social worker noted that Appellant did not return telephone calls to schedule the September 2012 visit. Both parents missed the November 2012 visit. Mother and Appellant had continued to visit the minor since October 2012, but arrived late to each visit. During both the October and December visits, the parents greeted the minor with hugs and kisses, and the minor responded with smiles. "The parents engaged [the minor] in a loving, caring and affectionate manner." They brought snacks, clothing, and a toy tea set for the December visit. Both parents interacted with the minor, took photographs of her, offered her food, and played with the tea set. They hugged and kissed the minor at the end of the visit.

The social worker summarized in the January 2013 supplemental assessment: "[The minor] appears to be a happy and well[-]adjusted child. She is strong[-]willed and very determined child. The caregivers are very patient and highly consistent, and work with [the minor] to help her understand limits and boundaries. [The minor] is clearly thriving in the care of her prospective adoptive parents." It was also noted that the prospective adoptive parents were willing to explore the possibility of maintaining a relationship with Mother and Appellant following adoption.

The Department continued to recommend a permanent plan of adoption for the minor, and reiterated its prior conclusion that the minor was generally and specifically adoptable. It also concluded, as it did in the August 2012 assessment, that termination of parental rights would not be detrimental to the minor.

3. *Permanency Hearing*

a. *Evidence*

At the section 366.26 hearing held on February 11, 2013, the Department submitted the August 2012 assessment and the supplemental January 2013 assessment.

The Department submitted a further offer of proof that (1) Appellant missed appointments for supervised visitation in November 2012, January 2013, and February 2013; (2) Mother missed a visit in November 2012; (3) both parents visited the minor in December 2012; (4) Mother had two additional visits with the minor on January 17, 2013, and February 1, 2013; and (5) the social worker would describe that "Mother is affectionate during visits, she greets [the minor] with hugs and kisses and smiles. She is loving with [the minor]." The Department urged that the evidence would show that Appellant "has not maintained regular visitation with [the minor], and that [she] would not benefit from the continuing relationship compared [with] the permanency that adoption would provide." It also urged that the evidence would show that "the Mother has generally maintained fairly regular visits, but it is a visiting relationship with [the minor. She] was only in [mother's] care for approximately the first year of her life. She has been out of their care for more than half of her life. And due to the interruption of the parent/child relationship she has more of a visiting contact with her parents."

Mother testified that her visits with the minor were decreased in October 2012 from three visits a week to one visit per month.[15] She missed the November 2012 visit because Appellant's mother was hospitalized on the day of the visit, and Mother was unable to make up the cancelled visit. Mother described the visits: "Well, usually she is always [*sic*] excited to see me. She embraces me, she . . . hugs me. She gives me kisses. After that if she doesn't ask for the snack first, she'll usually grab me by the hand and we'll start . . . exploring the toys in the room. . . . And sometimes she will go get a book and we'll sit down on the couch . . . and just look through it briefly." Mother testified that the minor "is kind of resistant" when visits end. The minor hugs her goodbye. She

[15] As noted, *ante*, the court actually reduced visitation to one time per month in April 2012.

described that the minor and her siblings "still have a really close bond" and the minor (on visits when her siblings are not present) would ask Mother about them.

In terms of termination of parental rights, Mother explained that the minor "is most sensitive when she leaves. . . .[S]he just looks confused ever[y] single time she leaves." Mother testified that "I think it is important that we do keep up a relationship. And I wish to see her a little more often . . ."

Appellant, who appeared in custody, elected not to testify, but requested that a statement on his behalf be made through his attorney. Appellant, through counsel, stated that he "objects to the termination of his parental rights. He believes that there is a strong bond between him and his daughter as reflected in the visitation logs. [He] . . . took [the minor] into his heart and asked this Court to raise him to presumed status, and that he has a little bit of a different and special relationship with her because of the circumstances of her birth. But he believes that it would not be in her best interest to have parental rights terminated as to himself and the Mother. [¶] . . . [¶] . . . He want[s] the Court to know that he was in denial about how his choices were affecting his family. . . [H]e does acknowledge at this time what he could not admit before, and that is that he has a problem. And because he couldn't admit that he had a problem[,] he could not accept the help that he needed. He truly thought that if he admitted he had a problem and asked for help[,] he would lose his children. But now that he's been in custody since December and had the opportunity to reflect on his life and the opportunity to make changes in his life, he does admit that he does have a problem and that he is willing to accept that help for the sake of his children."

b. *Court's Ruling*

After finding by clear and convincing evidence that the minor was generally and specifically adoptable, the court concluded that there was no compelling reason for finding that termination of parental rights would be detrimental to the child. The court noted that after her birth with "positive toxicology for THC and amphetamine," the minor

was out of the family's care for two months. But she was returned to the family upon the Department's recommendation, resulting in a "celebration by all of us that she would be part of the family." But as a result of M.A.'s being born with positive toxicology, the minor was only able to remain in the family's care for 10 months.

The court noted that a social worker had concluded from a November 2012 visit with the foster parents "that both girls [the minor and M.A.] presented clean, well-dressed, very much loved and cared for."[16] It observed that the minor and her sister were clearly now "part of a family unit" and that they "have been in the same home, and have had a rich experience within the family. Both not only together as siblings, which is very strong, they've been together since [M.A.] was born, and so although there is regular visitation and interaction with the older children . . ., her shared experience and family experience with [the foster parents and their family] and being part of that family is one that under the case law . . . is what is envisioned, and she is entitled to have that stability, to be part of that family unit."

The court found there to be a connection between the minor and the parents and to the minor's older siblings "that has become a visiting connection, a very sweet and loving one according to the visiting logs." The court indicated that during the visits, "[t]he parents s[i]t on the floor, they bring appropriate things, they engage, playing age appropriate interactions with the children. But it does not outweigh the stability that [the minor is entitled to, and it would not be detrimental to have a permanent plan of

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[16] The trial court also commented on notes from the November 2012 visit of the social worker to the foster family that "[the minor] and the sister . . . are playing, but [the minor] suddenly becomes upset. She becomes cling[y] to her foster mother and standoffish to the social worker. And then she ends up finally saying, . . . she thinks that the social worker is there to take her away. And so it took some reassurance that she wasn't going anywhere, that she wasn't being taken from the family, and that she was just being visited. And so after some re-engagement she was finally able to trust that the social worker wasn't taking her away."

adoption." It therefore rejected the parents' contentions that the beneficial parental relationship exception and/or the beneficial sibling relationship exception should apply, found the minor adoptable, and terminated parental rights.

C. *No Error in Rejection of Beneficial Parental Relationship Exception*

Appellant argues that the court erred in terminating his parental rights, thereby concluding that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i) was inapplicable. He asserts that he met his dual burden of establishing (1) his regular visitation of, and contact with, the minor, and (2) there was a significant and positive emotional father-daughter attachment between the minor and Appellant, the termination of which would be detrimental to the minor.[17] We find no error in the court's rejection of the beneficial parental relationship exception in this case.[18]

We first consider whether Appellant demonstrated the existence of a beneficial parental relationship by the two-prong showing of (1) regular visitation and (2) that the child would benefit from continuing the relationship. (*In re Marcelo B.*, *supra*, 209

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[17] Appellant's opening brief contains as a heading the argument "that no substantial evidence supported the selection of adoption as the permanent plan for B.A." (Capitalization omitted.) This suggests the claim that the court's finding that the minor was adoptable was not supported by substantial evidence. But Appellant develops no argument in support of this contention; therefore, we summarily reject any claim that the court's adoptability finding was not supported by substantial evidence. (See *People v. Miralrio* (2008) 167 Cal.App.4th 448, 452, fn. 4 [appellate court need not address undeveloped claims or ones that are inadequately briefed].)

[18] Appellant also argued below that adoption should not be selected as the permanent plan because it would result in a substantial interference with the minor's sibling relationship. Appellant does not raise the beneficial sibling relationship exception to adoptability (§ 366.26, subd. (c)(1)(B)(4)) in this appeal, and has therefore waived any challenge to the court order based upon the failure of the court to find the applicability of that exception. (See *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685 [failure to assert appellate claim in opening brief ordinarily results in waiver of that challenge].)

Cal.App.4th at p. 643.) The court made no specific findings as to whether there had been regular visitation and contact by Appellant. And it did not find that the minor would benefit from continuing the relationship with Appellant. Rather, the court concluded simply "that there is a connection with both [the minor's] older siblings and her parents[;] however, that has become a visiting connection, a very sweet and loving one according to the visit logs." We infer from this statement that the court found that the first element of a parental beneficial relationship—regular visitation—was present as to Appellant. There was certainly evidence in the record from which the court could have concluded otherwise. For the six months prior to the permanency hearing, Appellant visited the minor on only two occasions (October and December 2012). And, apparently due to his incarceration, he had not seen the minor for two months before the hearing. But there was substantial evidence from which the court may have concluded that there was regular visitation between Appellant and the minor, and we will therefore not question that inferred finding. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.)

But the court did not find that the minor would benefit from continuing the relationship with Appellant. Since Appellant, as the proponent of the exception, had the burden of producing evidence showing its existence (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314), the court's conclusion that he did not satisfy the second prong of the exception "turns on a failure of proof at trial, [such that] the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.]" (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.)

In determining whether the relationship between parent and child is beneficial, we look to such factors as "(1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs. [Citation.]" (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467, fn. omitted.) The age of the minor favored her adoptability. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562 ["child's young age [and] good physical

and emotional health" are attributes favoring adoptability].) As to the second factor, immediately after her birth in July 2010, the minor was removed from parental care. She was returned to parental care in September 2010, but was again removed from Mother's and Appellant's custody in July 2011 after Mother gave birth to M.A. because Mother and M.A. had tested positive for marijuana and methamphetamine. Together with her younger sister, M.A., the minor had stayed with the same foster parents (the prospective adoptive parents) for 19 months. Thus, the minor—two years, seven months old at the time of the permanency hearing—had spent 21 months in foster care, versus 10 months living with Mother and Appellant. The interaction between Appellant and the minor from supervised visitation was positive. But the Department reported that the minor had never developed a parent-child relationship with Mother or Appellant due to the "parents' substance abuse, criminal history and volatile relationship issues." Further, Appellant had offered no bonding study or other evidence showing that termination of parental rights would have a significant (or even any) actual detriment on the minor's life. (See *In re C.F., supra,* 193 Cal.App.4th at p. 557.) And the particular needs of the minor, as indicated in the Department's section 336.26 assessment, were that she be given "emotional stability, security and sense of belonging that [her] prospective adoptive family can provide"; and the Department concluded that these needs "outweigh[ed] any possible parent/child relationship."

There was indeed evidence that Appellant's contacts with the minor were positive—"a visiting connection [that was] a sweet and loving one," in the words of the trial court. But even if Appellant and the minor may have had "a loving and happy relationship" (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419), or "frequent and loving contact or pleasant visits" (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 555), these factors would not satisfy Appellant's burden of showing the existence of a beneficial parental relationship. In short, there was a failure of proof by Appellant that the minor would benefit from continuing her relationship with him. Thus, "the evidence [does not]

compel[] a finding in favor of the appellant as a matter of law. [Citations.]" (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.)

But even if we were to conclude (which we do not), based upon our review of the record for substantial evidence, that Appellant established as a matter of law the existence of a beneficial parental relationship, his appellate claim nonetheless fails. Appellant was also required to show that the purported existence of the beneficial parental relationship presented "a compelling reason for determining that termination would be detrimental to the child." (§ 366.26, subd. (c)(1)(B).) This is "a 'quintessentially' discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.]" (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315, original italics.) On the one side, there was undisputed evidence that the minor was adoptable and was currently living in a stable home, along with her younger sister, with prospective adoptive parents—and had been living with them for 19 months (nearly two-thirds of her young life). Balanced against this evidence, there was not a close father-child relationship between Appellant and the minor; Appellant had a history of drug use and crime; and he had historically failed during the dependency proceedings to address the issues at the root of the minor's placement with foster care, had failed drug tests and refused others, and had failed to attend counseling and other programs recommended by the Department. In balancing the benefits of adoption against the importance of the minor's relationship with Appellant and the potential detrimental impact caused by its severance, the court did not abuse its discretion in finding that there was no impediment to adoption. The court's conclusion that terminating Appellant's parental rights "would not be detrimental" to the minor—thereby holding that "severing the natural parent/child relationship would [not] deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed" (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575)—was not one that

" ' "exceeded the bounds of reason." ' " (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

In short, this is not a case involving "*exceptional circumstances* [citation] [in which the court is permitted] to choose an option other than the norm, which remains adoption." (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53, original italics.) We thus find that there was substantial evidence supporting the trial court's conclusion that Appellant failed to establish the existence of the beneficial parental relationship between him and the minor, and it did not abuse its discretion by finding that any purported existence of such a relationship did not present a compelling reason to apply this statutory exception in lieu of adoption.

DISPOSITION

The order filed February 13, 2013, approving adoption as the permanent plan for B.A. and terminating the parental rights of Mother and Appellant is affirmed.

Márquez, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.